

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-222584

DATE: June 30, 1986

MATTER OF: Ace-Federal Reporters, Inc.

DIGEST:

Bid that includes bid guarantee stamped "confidential" was properly accepted where two unstamped copies of the guarantee were included in the bid and where, because there are no apparent reason for restricting the guarantee, the restriction can be waived as a minor irregularity.

Ace-Federal Reporters, Inc., protests the award of a contract for reporting and transcription services to Executive Court Reporters under Department of Labor (DOL) invitation for bids (IFB) No. D/L 86-6. Ace-Federal argues that Executive's bid should have been rejected as nonresponsive since its bid guarantee was stamped "confidential." We deny the protest.

The solicitation required that each bidder submit a bid guarantee of \$20,000. Two of the four timely bids, which were opened on April 17, 1986, were rejected as non-responsive, leaving only Executive and Ace-Federal, with total evaluated bid prices of \$665,358.73 and \$1,284,191.90 respectively, in contention for award. Executive submitted an original and two copies of its bid guarantee; the original, but neither of the copies, had been stamped "confidential."

The protester contends that Executive's bid was nonresponsive because the restriction on the disclosure of Executive's bid guarantee prevented full examination of the bid at the opening. In response, the agency argues that all of the bid elements that are required to be revealed at a public bid opening (i.e., the essential nature and type of the product, price, quantity, and delivery terms) were publicly disclosed at the bid opening. Moreover, the agency says, Executive's bid included two copies of its bid

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guarantee that did not bear a confidential restriction and members of the public actually were given the opportunity at the bid opening to review Executive's guarantee.

The purpose of a public bid opening is to protect both the public interest and the bidders against any form of fraud, favoritism or partiality. Computer Network Corp., 55 Comp. Gen. 445, 451 (1975), 75-2 CPD ¶ 297. Our Office previously has interpreted the requirement for a public bid opening to mean that a bid may not restrict the government's right publicly to disclose the essential nature and type of the products offered and those elements of the bid that relate to price, quantity, and delivery terms. Cadre Corp., 53 Comp. Gen. 24, 25 (1973). This rule applies, moreover, to restrictions preventing disclosure of materials included with a bid, such as descriptive literature, if the restriction prevents disclosure of the essential nature and type of products offered or of elements relating to quantity, price, and delivery terms offered. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-4 (1985).

The rule against restricting disclosure should not be applied, however, if the restriction is merely a minor irregularity concerning matters of form rather than substance. Such defects can be waived under the FAR, 48 C.F.R. § 14-405. Here, Executive contends that its placement of a "confidential" stamp on its bid bond occurred inadvertently. We can see no reason why Executive, or any other bidder, should wish to restrict disclosure of its bid bond since such bonds serve to guarantee acceptance of award and later execution of performance or payment bonds, and in this instance, the bond has no effect on the contractual obligation Executive was offering to assume. That the stamping of the bond was inadvertent is reinforced by the fact that two unstamped copies were submitted. Evidently, Executive intended to restrict only certain materials which it submitted with its bid regarding its responsibility. In the circumstances, we find that the defect was waivable as a minor irregularity and that the agency acted properly in making award to Executive.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel